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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,559	09/12/2003	Kouji Matsuo	04329.3138	6404
7590 01/21/2005 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER WEISS, HOWARD	
			ART UNIT 2814	PAPER NUMBER

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/660,559	MATSUO, KOUJI	
	Examiner	Art Unit	
	Howard Weiss	2814	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 ~~is~~ are pending in the application.
- 4a) Of the above claim(s) 12-19 ~~is~~ are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 ~~is~~ are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>0903 &amp; 1204</u> .                                                     | 6) <input type="checkbox"/> Other: _____                                    |

Attorney's Docket Number: 04329.3138

Filing Date: 9/12/03

Continuing Data: none

Claimed Foreign Priority Date: 9/10/03, 9/12/02 (JPX)

Applicant(s): Matsuo

Examiner: Howard Weiss

***Election/Restrictions***

1. Applicant's election without traverse of the Group I invention, Claims 1 to 11, in the reply filed on 11/9/04 is acknowledged.
2. Claims 12 to 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant is requested to cancel the non-elected claims as part of a complete response to this office action. Cancellation of the non-elected claims would not preclude the later filing of a divisional application on the non-elected invention (please see 35 USC 120 and 121).

***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Objections***

4. Claim 6 recites the limitation "the recess" in Line 23. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 to 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mistry (U.S. Patent No. 6,716,046) and Gardner et al. (U.S. Patent No. 5,918,134).

Mistry shows most aspects of the instant invention (e.g. Figure 2) including:

- a plurality of MIS transistors **200** in a substrate **102**
- source/drain regions comprising extension regions **205** and contact regions **204**
- gate insulating film **211** and gate electrode comprising a polysilicon and silicide regions formed on the gate **107** and source/drain regions **106**
- a recess positioned between the source/drain regions and has a depth deeper than the peak of the extension region concentration (at the surface of the substrate)

Mistry does not explicitly show that the depth of the recess is no more than 6 nm. Gardner et al. teach (e.g. Figure 8) that it is preferable to make gate insulating films **132** between 3 and 30 nm (Column 6 Lines 52 to 54) and since the gate insulating film in the MIS transistor of Mistry fills the recess and it is obvious to make the recess no deeper than 6 nm. In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2144.05. It would have been obvious to a person of ordinary skill in the art at the time of invention to make the depth of the recess is no more than 6 nm as taught by Gardner et al. in the device of Mistry because it is a preferable depth.

### **Conclusion**

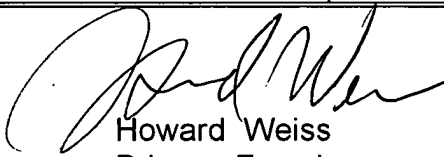
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kim et al. (U.S. Patent No. 5,712,503) and Hsu (U.S. Patent No. 5,448,094) show MIS transistors with recessed channels.

8. Paper copies of cited U.S. patents and U.S. patent application publications will cease to be mailed to applicants with Office actions as of June 2004. Paper copies of foreign patents and non-patent literature will continue to be included with office actions. These cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. Applicants are referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 for information on this policy. Requests to restart a period for response due to a missing U.S. patent or patent application publications will not be granted.
9. Papers related to this application may be submitted directly to Art Unit 2814 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The Art Unit 2814 Fax Center number is **(703) 872-9306**. The Art Unit 2814 Fax Center is to be used only for papers related to Art Unit 2814 applications.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Howard Weiss at **(571) 272-1720** and between the hours of 8:00 AM to 4:00 PM (Eastern Standard Time) Monday through Friday or by e-mail via **Howard.Weiss@uspto.gov**.

11. The following list is the Examiner's field of search for the present Office Action:

Field of Search	Date
U.S. Class / Subclass(es): 257/330, 334	1/14/05
Other Documentation: PLUS Analysis Report	1/12/05
Electronic Database(s): EAST, JPL	1/18/05

HW/hw  
18 January 2005

  
Howard Weiss  
Primary Examiner  
Art Unit 2814